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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/685,613	10/15/2003	Roberto Pavez Aranguiz	H 3680A US	5097

423 7590 03/31/2009
HENKEL CORPORATION
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EXAMINER
CHEUNG, WILLIAM K

ART UNIT	PAPER NUMBER
1796	

MAIL DATE	DELIVERY MODE
03/31/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	**Application No.** 10/685,613	**Applicant(s)** PAVEZ ARANGUIZ, ROBERTO	
	Examiner WILLIAM K. CHEUNG	**Art Unit** 1796	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE _3_ MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on _11 December 2008_.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) _18-39_ is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) _18-39_ is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☒ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☒ Certified copies of the priority documents have been received in Application No. 09/869467.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____.

4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ .

5) ☐ Notice of Informal Patent Application

6) ☐ Other: _____.

DETAILED ACTION

1. In view of the appeal conference held March 25, 2009, the instant application is reopen for prosecution. Claims 18-39 are pending.

2. In view of the appeal conference decision, the rejection of Claims 18-39 under 35 U.S.C. 102(e) as being anticipated by Kamiyama et al. (US 6,140,394), is withdrawn.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* **v.** *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

5. Claims 18-39 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kamiyama et al. (US 6,140,394) in view of the product literature of Hielscher –

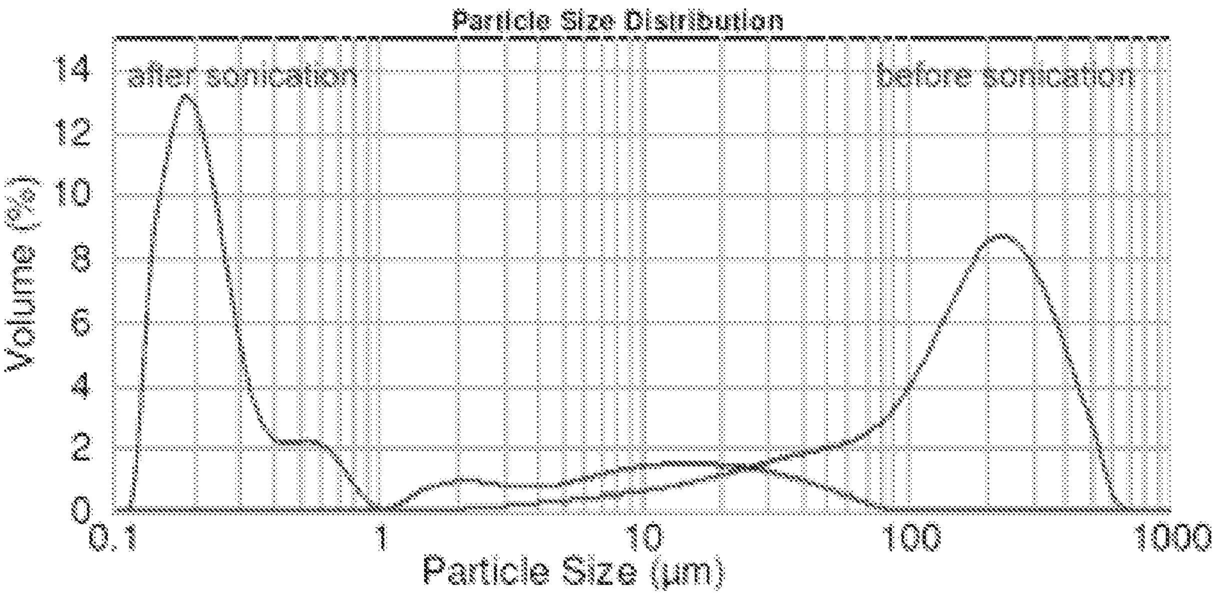
Ultrasound Technology, (http://www.hielscher.com /ultrasonics/size_reduction_silica_ 01.htm).

Kamiyama et al. (col. 6, line 17-62) disclose dispersion prepared by the suspension polymerization of vinyl monomers such as styrene, etc (col. 6, line 58-61), prepared in the presence of water soluble organic polymer such as polyvinyl alcohol, etc (col. 6, line 39-43) which inherently has a HLB value of at least 15 according to applicants' specification (page 11). In view of the broad molecular weight limitation of the soluble polymer being claimed, the examiner has a reasonable basis that the claimed molecular weight of more than 600 is also inherently possessed in Kamiyama et al. Further, Kamiyama et al. (col. 6, line 43-45) also teach the incorporation of inorganic powder (such as calcium phosphate powder and fine silica powder) into the suspension polymerization process. Although Kamiyama et al. fail to label the inorganic powder as filler, it is still a filler because the inorganic powder remains in the final prepared dispersion composition. Although Kamiyama et al. are silent on the exact dimension of the inorganic powder disclosed, however, it is well-recognized that the disclosed "powder" of Kamiyama et al. is referring to a size range of at least 200 microns. Further, according to Kamiyama et al. (Fig. 3-6), the polymer particles of Kamiyama et al. ranges from 1 to about 20 microns, 0.5 to 50 microns (col. 6, line1-14), or higher (col. 9, line 28-36; col. 10, line 42 to col. 12, line 66).

The difference between the invention as claimed and Kamiyama et al. is that Kamiyama et al. do not disclose a particle size, and therefore, Kamiyama et al. are also silent on the ratio of filler particle size to synthetic organic polymer particle size ranges as claimed.

However, a product literature of Hielscher – Ultrasound Technology, disclose standard silica that can have particle sizes range from 2 microns to 600 microns, with median particle size of about 250 microns. Since the product literature (abstract) clearly teach that the disclosed silica can be dispersed to form a dispersion with improved dispersion properties, it would have been obvious to one of ordinary skill in art to incorporate the particle size teachings of the product literature into Kamiyama et al. In view of the particle sizes as taught in the product literature, and the particle size as taught in Kamiyama et al. (Fig. 3-6), the examiner has a reasonable basis that the claimed ratios have been met by Kamiyama et al. in view of the product literature of Hielscher.

Product literature of Hielscher – Ultrasound Technology (page 2)



Starting (green curve) at an agglomerate particle size of more than 200 micron (D50) most of the particles were reduced to less than 200 nanometers. The obvious tailing to the right, results from the material composition (agglomerates and larger primaries). While the agglomerates are reduces easily, it takes longer processing to grind down larger primary particles.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to William K. Cheung whose telephone number is (571) 272-1097. The examiner can normally be reached on Monday-Friday 9:00AM to 2:00PM; 4:00PM to 8:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David WU can be reached on (571) 272-1114. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/William K Cheung/
Primary Examiner, Art Unit 1796

William K. Cheung, Ph. D.
Primary Examiner
March 25, 2009